

The Protection of Civilians and The Responsibility to Protect in UN Peacekeeping Operations : Are the New Humanitarian Norms still Valid for Peacekeeping?

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Are the New Humanitarian Norms still Valid for Peacekeeping?

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Introduction

In 2019, Severine Autesserre, professor at Columbia University, published an article, titled “The Crisis of Peacekeeping: Why the UN Can’t End Wars” in *Foreign Affairs* in its January and February issue of the year. In her article, she described:

Global leaders continue to call on “the blue helmets” as the go-to solution whenever violence flares in the developing world. U.S. President Barack Obama praised UN peacekeeping as “one of the world’s most important tools to address armed conflict”, and the UN itself claims that it has “helped end conflicts and foster reconciliation by conducting successful peacekeeping operation in dozens of countries”. But in fact, UN peacekeeping too often fail to meet their most basic objectives. On many deployments, they end up watching helplessly while war rages.¹⁾

According to the traditional principle of UN peacekeeping operations, they should be deployed after ceasefire are reached in armed conflicts, and they should not be deployed “when violence flares” or “while war rages”. In these situations, should peacekeepers take the responsibility to protect the civilians there? The answer is “yes” in accordance with the current normative system in the international affairs.

In the post-Cold War period, the international community has identified an overwhelming number of cases of war crimes and related human suffering, including brutal killing of civilians, torture, and sexual violence in the midst of internal armed conflict. UN peacekeeping operations have been required to be the main and presumably the best solutions to the brutal conflicts. As a result, the concept and norm of “protection of civilians (POC)” and “Responsibility to Protect (R2P)” have emerged as one of the efforts of the international community to prevent such serious war crimes and human suffering. UN

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peacekeeping operations have adopted such concept in their missions. In fact, the application of POC and then R2P to the tasks of UN peacekeeping operations was encouraged, as a result of independent inquiries into the failure to prevent the crime of ethnic cleansing in Rwanda and Srebrenica in 1994 and 1995, respectively.

Therefore, even now, as Autesserre implies, it would not be compatible with such a current norm if UN peacekeepers “end up watching helplessly while war rages”, even if their main tasks are literally supposed to “keep the peace”. Meanwhile, more than two decades have passed since such a norm has been required to comply with in UN peacekeeping operations. One is wondering if it still has its efficacy, applicability and even legitimacy in UN peacekeeping if Autesserre’s argument is true.

This paper will focus on the principle of POC and R2P in UN peacekeeping operations. One has identified a number of criticism and skepticism on the relation between the two. This article will address the question, “Is the relation still good enough?” as the title of this article puts it.

Protection of Civilians (POC) in UN Peacekeeping Operations- the cases of Sudan and the DRC

Compared to R2P, POC is more legally based. According to the Global Centre for the Responsibility to Protect, the POC refers to measures that can be undertaken to ensure the safety of civilians during times of armed conflict and which are rooted in obligations under

international humanitarian law (IHL), refugee law and human rights law. Under IHL, not only states but also non-state armed groups have obligations towards the protection of civilians. Humanitarian organizations including the UN and NGOs have a subsidiary role to press parties to an armed conflict to uphold their protective responsibilities and alleviate human suffering when parties to the conflict fail to do so.²⁾ Therefore, POC has a legitimacy in the legal aspect.

It was in February 1999 when the first debate on the protection of civilians was held in the UN Security Council, which then adopted a presidential statement expressing grave concern over the civilian toll of conflict casualties. Then the UN Secretary-General was requested by the Security Council to submit annual reports with recommendations on how it could improve both the physical and legal protection of civilians in situation of armed conflict.

In 1999, the UN Mission in Sierra Leone (UNAMSIL) was the first peacekeeping operation mandated to take the necessary action to afford protection to civilians under imminent threat of physical violence. However, ten years after that first Security Council debate, the UN Secretary-General acknowledged that “further efforts to strengthen POC remain crucial” in his report in May 2009. He also identified “human suffering owing to the fundamental failure of parties to conflict to fully respect and ensure respect for their obligations to prevent civilians.”³⁾ He accepted that action on the ground have not

yet matched progress in words and the development of international norms and standard. The report pointed out five core challenges in conducting POC by external organizations, one of which was “enhancing protection through more effective and better resourced peacekeeping and other relevant missions.”⁴⁾

Therefore, while the concept and norm of POC has a legitimacy with the viewpoint of international law, it can be argued if it has sufficient efficacy and applicability in the real missions of UN peacekeeping operations.

In this context, the writer conducted the intensive research on POC in the United Nations Mission in Sudan (UNMIS).⁵⁾ UNMIS was established on 24 March 2005 in accordance with Security Council Resolution 1590 (2005), which mandate centred on helping to implement the Comprehensive Peace Agreement (CPA). The CPA ended the decade-long conflict between the Government of Sudan, based in the northern part of Sudan, and the Sudan People’s Liberation Army/Movement (SPLA/M), supported mainly by people from the southern part of Sudan. The mandate of UNMIS included humanitarian activities, such as promoting human rights and protecting civilians under imminent threat of violence.

In fact, the extensive research on POC identified a number of issues in UNMIS. First, the interpretation and definition of POC in UNMIS was rather limited. In fact, as the official paper explained, UNMIS POC was not only a pilot unit, but also the only protection unit

within the Department of Peacekeeping Operations (DPKO). While many other organizations in Sudan that were engaged in the mission of “protection of civilians” existed, both internal and external to UN agencies, their view towards the mission of POC was different from that of UNMIS. For example, UNHCR in Sudan took a very long-term view of protection, focusing on employment generation, and the delivery of services such as sanitation, education, and health care. While these issues were important, the approach was contradictory to that of UNMIS, which focused on short-term issues of physical security.⁶⁾ The view of NGOs towards POC tended to be more similar to that of UNHCR than to that of UNMIS. Furthermore, even within UNMIS, there were a number of separate units dedicated to POC, including those in Protection, Child Protection, and Human Rights, and each of them approached the issue with very different objectives in mind. However, in reality, there was no opportunity for the disparate organizations engaged in POC to meet, exchange, and share information, or discuss opportunities to enhance their own missions of POC.

The second issue with POC in UNMIS was a lack of awareness of the mission mandate’s significance at the UN Security Council level, as well as among UNMIS personnel in the operational areas. Hitoshi Nasu claimed that the practice of POC in UN peacekeeping operations developed without much deliberation in the Security Council. For example, in the Council debates, Canada and

Japan were strong advocates of the concept of POC. The UK, the Netherlands, Argentina, Namibia, Rwanda, and Uganda also enthusiastically supported the inclusion of POC in the mandate of UN and non-UN peacekeeping operations, for example, in ECOMOG, UNAMSIL, and MONUC. However, no other states provided any particular comment on the POC mandate in the Security Council. Of particular note was a lack of enthusiasm in the debate on POC with regard to its relevance with the mandate under Chapter VII of UN Charter.⁷⁾

Likewise, at the field level, awareness or understanding of the mission's civilian protection responsibilities was also limited. In fact, some UNMIS personnel were entirely unaware of the Chapter VII component of the mandate. They believed that protecting civilians from tribal violence fell outside of the mission mandate, and was a distraction from its core business of supporting CPA implementation.⁸⁾ They considered that the responsibility for POC lay with the government, particularly the police and other justice sector institutions that promote and defend the rule of law. POC activities by UNMIS, in their view, would result in negative consequences in UNMIS relations with the local people, since even the mere presence of international military peacekeepers tended to create expectations among the locals that they would be protected if violence should erupt.⁹⁾

The third issue, closely related to the second, is a lack of proactive action by UNMIS personnel. The rule of engagement (ROE) of

UNMIS instructed its troops to “use force only when absolutely necessary to achieve your imminent aim, to protect yourself, your soldiers, UN or other designated personnel, installations, equipment and civilians under imminent threat of physical violence.”¹⁰⁾ Furthermore, the ROE authorized troops to “use force ... to protect civilians under imminent threat of physical violence, when competent local authorities are not in a position to render immediate assistance.”¹¹⁾ The regulation of the use of force in the ROE was considered appropriate because of incidents occurring in Sudan during the UNMIS periods. Nevertheless, many argued that UNMIS should have been more proactive in POC. For example, the report of the Secretary-General in June 2006 stated that hundreds of UNMIS soldiers had been deployed to provide protection mainly to UN installations, personnel, military observers, and logistics staff, but not to civilians.¹²⁾

In May 2008, UNMIS, in fact, faced a major challenge to its willingness to implement its POC mandate. Major conflicts between SPLA/M and the forces of the Sudanese Government broke out on May 13, 2008 in Abyei. The entire population of 30,000 civilians was forced to flee, when irregular forces, a faction of Southern Sudanese, looted and burned civilian homes, including a village that was within 45 meters of the UNMIS compound. After the civilians had fled, the UNMIS mission argued that it lacked a mandate to use force to protect civilian property. Meanwhile, US Special Envoy to Sudan, Richard Williamson, criticized

UNMIS for failing to take more robust action to protect civilians in Abyei.¹³⁾

In 2009, the POC Security Concept was developed by UNMIS Force HQ. However, the provisions in the Security Concept were not considered functional. According to the report of the Norwegian Institute of International Affairs (NUPI) on POC in Jonglei State in Sudan, there was little opportunity for proactive action because of the absence of clear operational instructions as to when and how to react to a situation of “imminent threat” against civilians. Therefore, the report argued, any level of commanders in UNMIS tended to simply follow instructions and orders from others.¹⁴⁾

Thus, the case of UNMIS indicates several significant challenges in terms of the protection of civilians in UN peacekeeping operations. The issues of the protection of civilians were also identified at other UN operations in Africa. For example, currently, several UN operations are the so-called “stabilization forces”. In such forces, their mandate tasks them to contribute to restoring a maintaining order in a given situation, by protecting a government and its civilians against identified aggressors. They are, therefore, tasked to undertake robust operations, based on Chapter VII of the UN Charter. The examples of the stabilization forces are MINUSCA (United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic) in CAR, MINUSMA (United Nations Multidimensional Integrated Stabilization Mission in Mali) in Mali and MONUSCO (United

Nations Organization Stabilization Mission in the Democratic Republic of the Congo) in DRC. In fact, these three stabilization missions are amongst four largest UN operations currently deployed. In other words, the stabilizations forces whose major pillar of the mandate has the protection of civilians, deserves being researched for the analysis of POC in UN operations. In this sense, the writer conducted the research for MONUSCO in the DRC.

MONUSCO was established in accordance with Security Council Resolution 1925 (2010) on 28 May 2010. “Stabilization” in MONUSCO meant stabilization through the protection and promotion of human rights and the promotion of democratization by means of the process of reliable elections. The purpose of the creation of MONUSCO was to build the state institution which creates security and justice systems and takes accountability for them. Its authorized size was the ceiling of 19,815 military personnel, with 760 military observers and staff officers, 391 police personnel and 1,050 formed police units.¹⁵⁾

The protection of the Congolese civilians was also a key element of the mandate of MONUSCO. However, it was difficult to conclude that the protection of civilians in MONUSCO improved compared with one in the period of MONUC. The term of “stabilization” in MONUSCO was rather nominal. For example, from 30 July to 2 August 2010 one witnessed a huge scale of systematic rapes sacrificing at least 303 women in Walikale district in North Kivu province, which was located only 30 kilometers from the MONUSCO base. In other

words, MONUSCO could not prevent nor stop the systematic rapes conducted by armed factions.

In November 2012, one witnessed the brutal occupation of Goma, the capital of North Kivu province in the eastern DRC, by the M23, the Tutsi-led anti-government armed group.¹⁶⁾ MONUSCO was seriously criticized for its ineffective response in preventing the onslaught.

On 24 February 2013, “the Framework for Peace, Security and Cooperation for the DRC and the Region” was signed by regional powers, which offered a comprehensive approach to the problem. The framework proposed a heavily-armed combat operations commanded by the UN. This framework, which the African Union assisted to put together, was signed in Ethiopia by leaders from the DRC, Angola, Burundi, the Central African Republic, Rwanda, South Africa, South Sudan, Tanzania, Uganda and Zambia. It was signed in the presence of UN Secretary-General Ban Ki-moon, who acted as one of the generators.¹⁷⁾ Thus, the Force Intervention Brigade (FIB) was established by UN Security Council Resolution 2098 (2013) of 18 March 2013. Its mandate included using all necessary means to “neutralize” armed groups which permitted it to use force, including deadly force.¹⁸⁾ The FIB, with 3,069 troops”, was led by Tanzanian general, and consisted of three infantry battalions, one artillery unit, one Special Forces unit and a reconnaissance company.

In fact, the FIB contributed to the stabilization of the eastern part of the DRC.

The FIB’s first engagement was the fight against the M23. Between July and November 2013, when the FIB, alongside FARDC units, engaged by artillery, aerial attacks, snipers etc. The offensive measures led to the victory on the side of FARDC/FIB.

Meanwhile, several negative aspects on the FIB were also identified. For example, unlike other regular MONUSCO forces, the FIB was fighting against the anti-government armed groups with FARDC, and therefore was considered to be a party to the armed conflict. A problem is that many armed groups are unable to distinguish and separate the regular MONUSCO forces from the FIB. This situation raises two problems, from operational and legal viewpoints. Operationally, the regular MONUSCO forces, which are less heavily armed, are more physically vulnerable to unexpected attacks from anti-government military factions. From the legal aspect, now MONUSCO including the FIB which lost impartiality, is regarded a party to the conflicts and will have lost the protections afforded to them under international law such as international humanitarian law (IHL), *the Convention on the Safety of United Nations and Associated Personnel* (SOFA), and *the Rome Statute of the International Criminal Law*.¹⁹⁾

While the FIB and FARDC, to some extent”, implemented the mandates of neutralizing “several” armed groups, a number of major armed groups were still active, disrupting the local security and damaging “the Framework for Peace, Security and Cooperation for the

DRC and the Region”. In fact, ADF was still brutal, targeting a number of innocent civilians. According to the Secretary-General’s report on 30 December 2014, in two months since October 2014 attacks attributed to ADF resulted in the killing of over 250 civilians.²⁰⁾ This figure increased to 347 in his report 26 June 2015. On 5 May 2015, a group of suspected elements ambushed a MONUSCO patrol between Oicha and Eringeti, killing two Tanzanian peacekeepers.²¹⁾ Meanwhile, FDLR²²⁾ continued committing human rights abuse against the civilian population. In North Kivu province, following operation *Sukoda II* conducted by FARDC against FDLR, 162 elements had been captured, 62 had surrendered and 13 had been killed. Despite this progress, the command and control structures of the group remained largely intact.²³⁾ Some of the FDLR fighters participated in the UN-led disarmament, demobilisation, repatriation and rehabilitation (DDRR) programs. However, most of their fighters and weapons remain at large, and this small gesture may be taken by the MONUSCO as a sign of sufficient gesture. Furthermore, MONUSCO and FIB was criticized of their reluctance of going after the FDLR as aggressively as it pursued the M23. Thus, the impartiality of FIB had been questioned. Above all, according to the impression of South African journalist who talked to non-government people in the region, the FIB had not done very much for nearly a year since its establishment.²⁴⁾

Thus, while the FIB was effective in the

limited mandate of neutralizing the armed groups in the limited areas for the short term, it is questionable that it will contribute to sustainable peace and protect civilians in the DRC.

Responsibility to Protect (R2P) in UN Peacekeeping Operations

Like POC, R2P is also a normative commitment initiated by the international community. It was initiated by UN member states in 2005 at the UN World Summit, consisting 3 pillars: Pillar I) every state has the Responsibility to Protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing; II) the wider international community has the responsibility to encourage and assist individual states in meeting that responsibility; and III) if a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.

The difference of POC and R2P is that “protection” in POC is literally categorized as an “activity itself”, whereas “responsibility” in R2P is a “attitude” towards the activity. Therefore, the norm of R2P should be initiated first, and POC is its implementing phase. Therefore, the term of R2P is not stated in UN mandates. R2P also emphasizes the prevention of atrocity crimes through action that reinforces good governance, strengthens mechanism for human rights protection, and

generates cooperation among diverse communities. POC generally requires host state consent, while R2P does not require the host state consent, but requires authorization by the UN Security Council, in keeping with the UN Charter.

Furthermore, Touko Piiparinen argued that R2P entails not only the limited objective of the protection of civilians from the immediate physical threat of mass atrocity crimes, but also, and more crucially, wider and ambitious transformative interventions aimed at changing the conditions and structures of target states and societies, sometime even contributing to regime change.²⁵⁾

In fact, R2P has provided several positive effects on UN peacekeeping operations. Alex Bellamy argued that there is a positive connection between the use of the term of R2P by government, the UN and NGOs and the possibility of the Security Council to pass the same issue.:

*In a little over half (53%) of the cases of war crimes or crimes against humanity where RtoP was invoked by any actor, the Security Council adopted resolutions in relation to that crisis. This compares with only 14% of cases where RtoP was not invoked. At face value, this suggests that the Council is more likely to adopt measures when a situation is framed in RtoP terms than in relation to similar events that are not so framed.*²⁶⁾

Thus, Bellamy stated in 2015 that Security Council's record in the past five years

demonstrated a newly found determination to act on R2P. In fact, the Security Council invoked the norm of R2P three times more frequently in the three years after the so-called “Arab's Spring” in Libya.

Meanwhile, it is to be noted that all of three pillars have not been equally supported by the international community. The views of the pillars have been manifestly divided among the permanent members (P5) in the Security Council:

*...indicatively, during the seminal 2009 General Assembly debate on R2P, China stated, ‘the implementation of the responsibility to protect should not contravene the principle of state sovereignty and the principle of non-interference in the internal affairs of States.’ Likewise in its statement to the Security Council after the adoption of Resolution 1973 on Libya, the Chinese ambassador noted, ‘China is always against the use of force in international relations’. Clearly this very restricted interpretation of R2P does not equate with the ethos of Pillar III which was obviously designed to legitimize external involvement in the affairs of sovereign states, including, in very extreme cases, coercive military intervention.*²⁷⁾

In fact, on R2P, there is the chasm of opinion between Global North and Global South, especially the group of 77 (G-77) countries, as well as China and Russia, which have reemphasized the primacy of state

sovereignty.²⁸⁾ This fact implies a significant impact on UN peacekeeping operations since the vast majority of troop contributing states to UN peacekeeping operations are from Global South as well as China.

In fact, as Charles Cater and David Malone pointed out, while R2P remains a useful principle in the Security Council, its use will continue to depend very much on relationship among the major powers and their analysis of complex situations on the ground.²⁹⁾ Aidan Hehir's view on the causal factors on "an R2P action" in Libya is more radical:

*... it has also been noted that the causal factors which led to the decision to intervene were not related to R2P; these include the unique unpopularity of Gaddafi, the proximity of Libya to mainland Europe, Libya's oil reserves, and most particularly, the statement made by the Arab League on 12 March 2011 calling for military action against Libya. This statement convinced the US to support action, and Russia and China not to oppose it.*³⁰⁾

Likewise, Graham Harrison conducted research on international involvement in Kenya's election, suggesting that influence has not been in new R2P agendas but iterations of long-standing ones in which regional geopolitics is a major concern and the US and EU have been preponderant agencies following their own familiar approaches.³¹⁾ Harrison warned the complete absence of any related R2P project in the growing mass violence in South

Sudan as well as Mali, Chad, and Northern Nigeria.³²⁾ From the totally opposite viewpoints, states might exploit humanitarian pretexts, abusing R2P in pursuit of other strategic ends.³³⁾

Selectiveness of R2P was repeated by Abiodun Williams in 2017. He argued that international engagement to prevent or halt R2P would remain conditional on a number of variables, including the complexity of the situation, the risks involved, the potential for success, the international political and financial climate, and the geopolitical importance of the country.³⁴⁾

How has the practicability of R2P in UN peacekeeping been? As Thomas Weiss put it, "The main challenge facing the responsibility to protect is how to act, not how to build normative consensus". In this context, Edward C. Luck argued that R2P's first decade clearly had produced more questions than answers, and that they were the kind of second-generation questions that speak to how far R2P has come along the road from theory to practice.³⁵⁾

In this context, one academia said that the project of R2P is making little difference in situation of mass violence, and another suggested a more bottom-up approach. However, theoretically R2P generally accepts military intervention as a main measure against mass violence and therefore its top-down approach is inevitable. Therefore, this argument would be a dilemma of R2P.

Thus, many academic figures pointed out the structural and organizational defects which

R2P as well as POC has as the newly emerging principles and projects. Meanwhile, in the empirical operational field of UN peacekeeping operations, many soldiers and officers have had the different viewpoints. For example, when the author conducted the field research to the United National Interim Forces in Lebanon (UNIFIL) in August 2019, all of the soldiers and officers in UNIFIL have considered the protection of civilians as essential. In the research, Colonel Byern in the Irish Defence Forces, who was the Deputy Commanding Officer of Sector West of UNIFIL criticized the so-called “Cruz Report” which was published as the UN official report which focused on how to reduce the number of UN casualties, saying:

*The essence of UN peacekeeping operations is not the protection of UN personnel, but the protection of local people. Therefore, it is essential that peacekeepers take the responsibility to protect local people.*³⁶⁾

UNIFIL has been well-known as the mission with the UN mandate of Chapter VI. Like Colonel Byern, many Irish soldiers and offices whom I had an interview with mentioned that humanitarian activities are important tasks in UNIFIL. In such tasks, the sense of responsibility to protect civilians has been essentially taken for granted by them.

Conclusion

This paper dealt with two emerging humanitarian norms, the Protection of Civilians and the Responsibility to Protect in UN

operations. The conclusion will be as follows.

In terms of POC, the cases of Sudan and the DRC exemplified several significant issues and challenges in the tasks of the protection of civilians in UN peacekeeping operations. Presumably, both of the case convinces of the problem of “filling the gap”. That is, one needed to fill the gap in the definition of POC between the UN and non-UN agencies, and between military and civilian staff within the UN. One also suffers from the failure of filling the gap in the attitude towards robustness in the operations between FIB and normal MONUSCO forces. Meanwhile, both UNMIS in Sudan and MONUSCO in the DRC had the common issues of lack of proactive actions. Currently, eight out of fourteen UN peacekeeping operations still have POC at the core of their mandates, which means that 96% of deployed peacekeepers are currently tasked with protecting civilians as part of their mission objectives.³⁷⁾ Mainstreaming the principle of the protection of civilians still seeks further improvement to tackle the above issues.

Meanwhile, the issues of R2P is rather organizational and political than operational. In fact, the term of R2P itself has played an effective and influential role in the debates on the issues of war criminals in Security Council. However, there is lack of consensus in terms of how far they should pursuit the principle of R2P among the great powers, especially P5. While R2P was absent in several UN operations, it was abused for some great powers' political and strategical purposes. The nature of selectiveness was clearly identified in the

project of R2P. The top-down approach of R2P was also pointed out.

On the whole, the principles of POC and R2P were advocated with significant enthusiasm and ambition for the purpose of saving vulnerable people in war-torn situations. Both of them win the absolute legitimacy with the viewpoint of liberalism and humanitarianism. However, this paper indicated a number of issues to be tackled after about two decades of their establishment. This is not to say, POC and R2P should not have been advocated. Rather, they should be reassessed, modified and improved.

notes

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- 19) Scott Sheeran and Stephanie Case “The Intervention Brigade: Legal Issues for the UN in the Democratic Republic of the Congo”, p. 1
- 20) UN Document S/2014/957 *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo submitted pursuant to paragraph 39 of Security Council resolution 2147 (2014)*, 30 December 2014, para. 17
- 21) UN Document S/2015/486 *Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo*, 26 June 2015, para. 12
- 22) FDLR is the French acronym for the Democratic Forces for the Liberation of Rwanda, originally established by ethnic Hutus who fled Rwanda after participating in the genocide of the Tutsi population.
- 23) *Ibid.* para. 13
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